

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3591.12, Subsection (a)

Peach Fruit Fly Eradication Area

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance
the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry from the movement and spread of injurious plant pests within California.

Specific Purpose and Factual Basis

The specific purpose of Section 3591.12 is to provide authority to the State to eradicate infestations of *Bactrocera zonata* from within the declared eradication area by the established means and methods.

The factual basis for the determination by the Department that the amendment of this regulation is necessary is as follows:

Peach fruit fly, *Bactrocera zonata*, is an insect pest which attacks the fruit of various plants including apple, peach, pear, tomato and citrus. The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

Adult peach fruit flies have recently been trapped in the county of Fresno. On May 15, 2006, an adult male peach fruit fly was taken from a trap in the Fresno area of Fresno County. On May 17, 2006, another adult male peach fruit fly was taken from a trap in the Fresno area. The multiple finds of the fly meet the State's and national and international standards that are indicative of an incipient infestation of the fly in the Fresno area of Fresno County.

The peach fruit fly is a methyl eugenol attracted fruit fly. The Department's action plan for these types of fruit flies requires an eradication response if two adult flies are detected within three miles of each other and within a time period equal to one life cycle of the fly. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for an eradication response. The Food and Agriculture Organization of the United Nations has a similar international standard established.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The entire county of Fresno is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established peach fruit fly infestation. Fruit which may have already been moved from the infested area to another portion of the county and flies which may have already spread naturally from the infested area may have already resulted in small infestations outside the current known infested area. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county should be established as an eradication area.

The peach fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this is a ministerial action for an emergency and an action also for the protection of natural resources and the environment by a regulatory agency and is therefore exempt from the requirements of the CEQA statutes, under PRC Section 21080, and under Sections 15268, 15269, 15307 and 15308 of the CEQA Guidelines.

The immediate implementation of this proposed regulatory action is necessary to prevent the USDA, APHIS from considering the entire state as infested with peach fruit fly, rather than just

the current area of Fresno County. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA, APHIS and our international trade partners.

These facts and circumstances clearly indicate that the spread of peach fruit fly presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department is therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The effect of this regulation is to provide authority for the State to perform control and eradication activities against *Bactrocera zonata* in Fresno County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it was necessary to immediately begin treatment activities against the fly. Therefore, it was necessary to amend this regulation as an emergency action.

Estimated Cost of Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3591.12 does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the amendment of 3591.12(a).

The cost impact of the changes in the regulations on private persons and businesses are expected to be insignificant.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that

the action will not have a significant statewide adverse economic impact on business was based on the following:

The emergency amendment of Section 3591.12(a) provides authority for the Department to conduct eradication activities against peach fruit fly within Fresno County and there are no known private sector cost impacts.

Assessment

The Department has made an assessment that the repeal of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption and subsequent amendment of Section 3591.12:

“Action Plan, Peach Fruit Fly, *Bactrocera zonata* (Saunders),” May 2000, Food & Agricultural Organisation, International Atomic Energy Agency (50 pages).

“Action Plan for Methyl Eugenol Attracted Fruit Flies, Including the Oriental Fruit Fly, *Bactrocera dorsalis* (Henel),” Revised April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (ten pages).

“Pest and Damage Record #1417655,” dated May 15, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1374643,” dated May 17, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.